

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0085 & 2004-0224, Cary Silverstein v. Town of Alexandria, Chief of Police, the court on March 14, 2005, issued the following order:

The defendant denied the plaintiff's application for a resident pistol/revolver license under RSA 159:6 (2002) (amended 2003). The plaintiff sought relief in the superior court under RSA 159:6-e (2002). After an initial hearing, the superior court on September 18, 2003, ordered the defendant to detail the reasons for his denial of the plaintiff's application. After further hearings, the court rejected the plaintiff's arguments regarding municipal estoppel, residency and suitability. The court found, however, that the defendant violated the statutory requirement that if the application is denied, "the reason for such denial shall be stated in writing." RSA 159:6. The court also found that the defendant knew or should have known that the denial must include a reason, and that the civil proceeding in superior court was necessary in order for the plaintiff to receive a detailed reason for the denial. Accordingly, the court granted the plaintiff attorney's fees for his action "limited to the Court's order of September 18, 2003 requiring a detailed response to the denial," and further provided that the plaintiff be awarded fees "for the portion of the proceedings which included and ended with the Court's order dated September 18, 2003."

The plaintiff filed an affidavit of attorney's fees and costs for the period between June 23, 2003, and September 18, 2003, totaling \$9,784.38. After reviewing the affidavit, the superior court ruled that the claim was unreasonable, and instead awarded reasonable fees and costs of \$3,500.00. The defendant appeals the award of attorney's fees and costs. The plaintiff appeals the superior court's failure to award the full amount of fees and costs requested.

We review the trial court's award of attorney's fees under an unsustainable exercise of discretion standard, giving deference to the trial court's decision. Arcidi v. Town of Rye, 150 N.H. 694, 704 (2004).

RSA 159:6-f, I (2002) provides in part that if a licensing entity, in violation of the provisions of this chapter, refuses to comply with this chapter, it shall be liable for reasonable attorney's fees and costs "incurred in a lawsuit under this chapter to enforce the terms of this chapter, provided that the court finds that such lawsuit was necessary in order to obtain compliance with this chapter by the licensing authority." Fees shall not be awarded unless the court finds that the licensing entity knew or should have known that the conduct engaged in was a violation of this chapter.

While the superior court denied the plaintiff's request that he be granted a license, the record supports findings that the defendant violated RSA 159:6 by not providing sufficient reasons for the denial, that the defendant knew or should have known that his conduct violated the statute, and that the plaintiff's lawsuit was necessary to obtain compliance with this statutory requirement. Accordingly, we find no unsustainable exercise of discretion in the superior court's award of reasonable attorney's fees and costs limited to that portion of the proceedings which resulted in the September 18, 2003 order.

Nor do we find that the trial court unsustainably exercised its discretion by declining to award the plaintiff's total request of \$9,784.38. RSA 159:6-f, I, limits any award to reasonable fees and costs. The court properly limited the award to the court's order of September 18, 2003, requiring a detailed response to the denial. Cf. Appeal of Brown, 143 N.H. 112, 121 (1998) (appropriate to limit fee award where unsuccessful claims are severable analytically from successful ones). The affidavit of attorney's fees plainly included fees unrelated to the plaintiff's successful claim. The trial court was in the best position to determine what services were reasonably necessary to obtain compliance with the statute. We conclude that the plaintiff has failed to demonstrate that the trial court's discretion was exercised for reasons clearly untenable or to an extent clearly unreasonable to his prejudice. See Arcidi, 150 N.H. at 704.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox
Clerk